

ROMAN ESPAÑA, PLAINTIFF AND APPELLEE, VS. LEONARDO LUCIDO, DEFENDANT AND APPELLANT.

G. R. No. 3568. August 23, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

The rights of the parties in this case must rest upon the contract made on the 5th day of January, 1892, between the plaintiff and his wife and Manuel Lucido, the father of the defendant. By virtue of that contract the plaintiff and his wife sold to Manuel Lucido the property here in question. The contract contains the following clause:

"That in view of the fact that we, Roman España and Carmen Formentera, husband and wife, find ourselves in need of a certain amount of money, we have found it advisable to sell, as we hereby do sell, the above-mentioned cocoanut and rice lands to Manuel Lucido, for the sum of 500 pesos, the equitable value thereof, the right being reserved to us to repurchase the said lands at the same price, at any time when we may be in a position to exercise said right."

That this is a contract of sale with the right to repurchase, such as is mentioned in article 1507 of the Civil Code, is very clear. The contract having been executed in 1892 is subject to the conditions of that code. Article 1508 of the same code is as follows:

"The right referred to in the preceding article, in the absence of an express agreement, shall last four years counted from the date of the contract.

"Should there be an agreement, the period shall not exceed ten years."

Whether in this contract there is an express agreement as to the time within which the repurchase must be made, we do not decide. If the clause which we have above quoted gave the plaintiff the right to repurchase at any time, it was plainly void, since article 1508 prohibits a contract which fixes a period of more than ten years for that purpose. If the words contained in the contract do not constitute an express agreement, then the time within which the plaintiff could repurchase expired in four years from January 5, 1892—that is to say, on the 5th of January, 1896. If it be considered that by the terms of the contract the plaintiff was entitled to ten years within which to repurchase, the ten years, under ordinary circumstances, would have expired on the 5th day of January, 1902.

No attempt to repurchase was made, nor was any action brought by the plaintiff to assert his rights under this contract until the 27th day of November, 1905. The action is therefore barred unless the running of the statute of limitations was interrupted. The court below held that it was interrupted by war, which war commenced in the month of August, 1896, and that during the time elapsing from the month of August, 1896, when war was declared against Spain by the Filipinos, as is said in the decision, until the 1st day of July, 1901, when the Court of First Instance of the Province of La Laguna was reorganized and opened, the statute of limitations did not run and that that time must be excluded in determining when the ten years expired.

So far as the Province of La Laguna is concerned, we can not agree with the conclusion of the court below that

war existed therein between the Filipinos and Spain from the month of August, 1896. Whatever may be said of the conditions in the Province of Cavite, the records of our own court show that the Court of First Instance of the Province of La Laguna was open and was transacting business as late at least as the 15th day of April, 1898. The hostilities in Cavite during that time did not constitute a war between two independent nations. It was an insurrection or rebellion against Spain. In the case of *The Prize Cases* (2 Black, U. S., 635) the court said at page 667:

"As a civil war is never publicly proclaimed, eb nomine, against insurgents, its actual existence is a fact in our domestic history which the court is bound to notice and to know.

"The true test of its existence, as found in the writing of the sages of the common law, may be thus summarily stated: 'When the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the courts of justice can not be kept open, civil war exists. * * *' "

Applying this test, it is apparent that no state of war existed in the Province of La Laguna until at least after the 15th day of April, 1898. The courts were again opened in July, 1901, so that in no event was the running of the statute of limitations interrupted for more than a period of about three years and three months. The entire time elapsing between the date of the contract, the 5th of January, 1895, and the time when this action was commenced on the 27th of November, 1905, was thirteen years and ten months. It is seen, therefore, that when the plaintiff presented his complaint in this action, the time given him by article 1508 of the Civil Code had expired. The action therefore, can not be maintained. (See *Garcia vs. Diamson*[1] (5 Off. Gaz., 536).

The judgment of the court below is reversed, and the defendant is acquitted of the complaint, with the costs of the first instance against the plaintiff. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ. concur.

[1]Page 414, supra.

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